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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,320	07/16/2000	John Peter Gahan		1490

7590 02/27/2003  
John Peter Gahan  
P O Box 3500  
Parramatta, 2124  
AUSTRALIA

EXAMINER

TRIEU, THAI BA

ART UNIT PAPER NUMBER

3748

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Notice of Abandonment</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/600,320	GAHAN, JOHN PETER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Thai-Ba Trieu	3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 17 July 2002.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☒ A reply was received on 07 February 2003 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:  
  
See Attached Office Action.

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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### DETAILED ACTION

This office action is in response to applicants' letter filed 2/7/03. Applicant has requested that this office aid in locating his Patent Attorney who could deal with this application.

In response thereto, a call was made to Michael Folise on 2/13/03 requesting his current information. The undersigned was informed at that time, that Mr. Folise has never represented you as your attorney. He further instructed the undersigned to give you his updated address and telephone number, that is as follows:

Michael Folise  
Seed Intellectual Property Law Group  
701 Fifth Avenue  
Suite 6300  
Seattle, Washington 98101  
Tel#: (206) 682 - 4900

Upon review of the file, it has been verified by the undersigned that at no time have you given Mr. Folise Power of Attorney in this application, accordingly, all correspondence regarding this case will be directed to yourself, the inventor.

Additionally, the maximum period for response to the Non-Compliant letter mailed 7/17/02, is 6 months, which means that this office would have had to have received a compliant response by 1/17/03. Since this office has not received any compliant response, this case is held to be **abandoned** as of 1/7/03 for failing to properly respond to the Non-Compliant letter mailed 7/17/02.

Applicant's reply to the Office Action of **07/17/2002** was received in the Patent and Trademark Office on **02/07/2003**, which is after the expiration of the period for reply set in the last Office Action. Since no time remains for applicant to obtain an extension of the period for reply by filing a petition under 37 CFR 1.136(a), this application is *abandoned*. Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional, as set forth below.

**A. Failure to reply was unavoidable.**

A petition to revive an abandoned application on the grounds that the failure to reply was unavoidable (37 CFR 1.137(a)) must be accompanied by: (1) the required reply (which has been filed); (2) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c); and (4) the \$55 petition fee as set forth in 37 CFR 1.17(l). No consideration to the substance of a petition will be given until this fee is received.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable, as well as inadvertent. This must include: (1) a satisfactory showing that the cause of the delay resulting in failure to reply in timely fashion to the Office action was unavoidable; and (2) a

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satisfactory showing that the cause of any delay during the time period between abandonment and filing of the petition to revive was also unavoidable.

A terminal disclaimer and the \$650 terminal disclaimer fee is required under 37 CFR 1.137(c) if the application is: (1) a design application, (2) a utility application filed before June 8, 1995, or (3) a plant application filed before June 8, 1995. The terminal disclaimer must dedicate to the public a terminal part of the term of any patent granted the application equivalent to the period of abandonment of the application, and must also apply to any patent granted on any application containing a specific reference under 35 U.S.C. 120, 121 or 365(c) to the application for which revival is sought.

**B. Failure to reply was unintentional.**

A petition to revive an abandoned application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) must be accompanied by: (1) the required reply (which has been filed); (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c) (see above discussion); and (4) the \$55 petition fee as set forth in 37 CFR 1.17(m). No consideration to the substance of a petition will be given until this fee is received. The Commissioner may require additional information where there is a question whether the delay was unintentional.

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The required items and fees must be submitted promptly under a cover letter entitled "Petition to Revive."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, DC 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza 4, Room 3C23  
2201 South Clark Place  
Arlington, VA 22202

Telephone inquiries with respect to this matter should be directed to the Office of Petitions Staff at (703) 305-9282. For more detailed information, see MPEP § 711.03(c).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai-Ba Trieu whose telephone number is (703) 308-

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6450. The examiner can normally be reached on Monday - Thursday (6:30-5:00), every Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on (703) 308-2623. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

TTB  
February 26, 2003



Thai-Ba Trieu  
Patent Examiner  
Art Unit 3748



THOMAS DENION  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700